

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RONNIE WASHINGTON,

Petitioner,

Civil No. 05-983-TC

v.

FINDINGS AND
RECOMMENDATION

JEAN HILL,

Respondent.

COFFIN, Magistrate Judge.

Petitioner, an inmate in the custody of the State of Oregon, filed a petition under 28 U.S.C. § 2254 challenging his sentence for first degree assault. Petitioner did not pay the \$5 filing fee or file an application to proceed in forma pauperis.

Petitioner alleges that his sentence is unconstitutional because the sentencing court did not adequately explain the factual bases supporting the application of aggravating

factors to sentence. Petitioner alleges that "these above claims is being litigated in state at this time." Petition (#2) 6.

A state prisoner must exhaust all available state court remedies either on direct appeal or through collateral proceedings before a federal court may consider granting habeas corpus relief. Keeney v. Tamayo-Reyes, 112 S.Ct. 1715, 1720 (1992); Duckworth v. Serrano, 454 U.S. 1, 3 (1981). A prisoner satisfies the exhaustion requirement by "fairly" presenting his claims to the highest state court with jurisdiction to consider them. Keeney, 112 S.Ct. at 1720; Picard v. Connor, 404 U.S. 270, 276 (1971). A prisoner fairly presents his claims by describing in the state court proceeding both the operative facts and the legal theory on which his claim is based. Anderson v. Hareless, 459 U.S. 4, 6 (1982); Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988); Tamapua v. Shimoda, 796 F.2d 261, 262 (9th Cir. 1986).

In this case petitioner's pending state court proceeding constitutes an unexhausted state court remedy. Therefore this proceeding is premature.

Petitioner's Petition (#2) should be denied without

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prejudice. This proceeding should be dismissed.

DATED this 5 day of July, 2005.

/s/ Thomas M. Coffin
Thomas M. Coffin
United States Magistrate Judge